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THE
T R I A L
OF
JOHN SMITH,
BOOKSELLER,
OF
Portsmouth-Street, Lincoln's Inn Fields,
BEFORE
LORD KENYON,
IN THE
COURT OF KING'S BENCH, WESTMINSTER,
ON DECEMBER 6, 1796,

FOR SELLING A WORK, ENTITLED,
'A Summary of the Duties of Citizenship.'

L O N D O N :

Printed for and sold by Mrs. SMITH, at the Pop-Gun,
Portsmouth-street, Lincoln's Inn Fields.

SEP 15 1937

9/15/37

P R E F A C E.

TYRANTS and Priests have ever been the enemies of public discussion; because the search after truth leads to wisdom, and wisdom is fatal to every species of imposition; nor has there been an age since man was formed into society, in which the most virtuous citizens have not been buried alive in dungeons, and compelled to associate with the vilest felons. Every art has been tried to load their memories with infamy, and the resentment of courts has been too often wreaked upon their innocent posterity. But truth is eternal; and when the mist of superstition has been dispelled, and calm Reason re-assumed her sway, the people have repented of their errors—they have found that those men, who have been represented as the enemies of order and religion were the firmest friends of virtue; but, alas! it was impossible to restore health to a broken constitution, or to rescue the victims of persecution from the grave. Death, more humane than their persecutors, had put a period to their miseries; and the errors of the nation have been confessed in raising altars to their memories.

The subject of this appeal is the father of a numerous offspring; his moral character has been unfulled with the breath of calumny, nor have his persecutors dared to impeach his integrity; and yet he was shut up in the dungeons of Newgate for a whole year, upon the information of an unprincipled wretch.—Upton, whose villainy even makes his employer blush, accused him of a conspiracy to assassinate the King; but the Ministry, conscious of his integrity, withdrew their evidence, and a jury of his countrymen pronounced him not guilty.—Yet, not satisfied in ruining his circumstances and injuring his constitution, the Attorney-general, whilst he was under confinement for High Treason, commenced a prosecution against him for selling the Duties of Citizenship.

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The law says, that besides selling a libel, the person must be convicted of doing it with an evil intention.—It has been proved that the book was sold in his absence, and that he was ignorant of its contents, and yet he has been declared guilty, and sentenced to suffer two years imprisonment in the dungeons of Cold-bath-fields.—Good heavens ! will man never cease to persecute his brother, and will the experience of the past produce no reflection in the present ?

He is now the solitary inhabitant of a gloomy cell, without a ray of hope, except the consolation of a good conscience—bread and water his only allowance—massy bars and iron grates exclude him from the society of men, and in the prime of life he is sinking into an untimely grave !

The imprisonment of La Fayette has engaged the attention of the British Senate; but are there no Bastilles in England ? Are the gaolers of Britain more humane than those of Germany ? And must the historian record that the rich and powerful only find advocates in the House of Commons ?—Whatever the advocates of La Fayette may urge in his favour, is surely applicable to the subject of this appeal—and it is to be hoped they will reserve some share of pity for the victims of persecution in Great Britain.

But whatever may be his fate, the friends of humanity will sympathize for an affectionate wife and four infant children. They are helpless and forlorn—their protector is dead to them, and when they think on his woes they suffer all the pangs of anguish and despair.—May the Disposer of the universe be their guardian; and may the sad effects of cold and hunger never add to the miseries they already feel ! May they find a husband and a father in their country; and may the people shew them that compassion, which his Majesty's Ministers have denied them.

THE EDITOR.

London, Feb. 28, 1797.

The KING v. JOHN SMITH.

THE Indictment states—That John Smith, being a wicked, malicious, and ill-disposed person, and greatly disaffected to our Lord the King and the Government of this kingdom, and wickedly, seditiously, and maliciously contriving and intending to scandalize and defame, and bring into hatred and contempt, our said Lord the King, and the established Government, Religion, and Law of this kingdom, and the Clergy of the Church of England as by law established, and the Army of our said Lord the King; and to insinuate and cause it to be believed that the Government of this kingdom as by law established is an usurped, unjust, and tyrannical government, and that the Army of our said Lord the King is used and employed by the Government of this kingdom as an instrument of tyranny and oppression over the people thereof, and thereby to raise and excite sedition, discontent, and irreligion in the minds of the liege subjects of our said Lord the King, on the 17th day of November, 1795, in the county of Middlesex, that is to say, in the parish of St. Giles's in the Fields and St. George's Bloomsbury, wickedly, seditiously, and maliciously did publish, and cause and procure to be published, a certain Libel, containing therein, amongst other things, divers wicked, scandalous, malicious, and seditious matters and things of and concerning of our said Lord the King and the established Government, Religion, and Laws of this kingdom, and of and concerning the Clergy of the Church of England as by law established, and the Army of our said Lord the King, to the tenor and effect following: (that is to say)—“The Tyrants of England may be subdivided into several classes: the most fatal to felicity and the progress of benevolence are Governors of all descriptions, Priests, Soldiers, and Lawyers. The Slaves of England can only be portioned into two lots—slaves through ignorance, and willing slaves. 'Tis our Governors (meaning the governors of the people of this kingdom) that stand foremost in the list of inimical. They monopolize a power that is both fatal and unjust. Part of this power they grossly purloined—the other moiety

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moiety they procured by complicated chicanery : and the sole authority they can shew for the continuance and enjoyment of either half, is force, or precedent of prior possession. Should the validity of former claimants, from whom they are immediately descended, be questioned or disputed, the immense proof to the justice of their unhallowed claim is some obsolete charter ; and our debasement is warranted, proved, and guaranteed, by the covering of a rotten sheep and the splashings of stale ink ! Who, countrymen, but the interested, can for a second suppose that any grant from an ignorant, terrified, or corrupt ancestry, can coerce an enlightened, courageous, incorruptible posterity ? If the decisions of our progenitors are irrevocable, and must for perpetuity bind us to misery, then are we born in slavery, and instead of blessing their memory, we should wail and gnash our teeth at the very name of those detestable proscribers ! But, Citizens, this is the reverse of truth ; for we are born free. Slavery is an imposition which no parents could entail upon us—no authority justify ! Nature has written our freedom in characters that may be blurred, but they can never be obliterated. Notwithstanding the imperfect plea brought forth in support of royal fraud, the injured sufferers must not even breathe resentment, or sigh out a bitter complaint : their mouths are instantly closed, and organized cruelty is ready to counteract the feeble efforts of spiritless wretchedness. The Military (meaning the Army of our said Lord the King) is a collateral engine used by Government (meaning the Government of this kingdom) to give efficiency to flimsy claims, and enforce compliance to arbitrary commands. Soldiers (meaning the soldiers of the army of our said Lord the King) are by profession slaughterers ; and their fame, glory, and accomplishments, depend on the speed, certainty, extent, and insensibility of their murdering faculties. They are separated from the residue of their brethren by the singularity of their views. Their unsocial bands are kept apart from the mass, that their cruel spirits may not be dulled by sentiments of benevolence—that the ties of civic friendship, or the rich consciousness of family endearments, may not increase their value for life. They are as unique in their ends as they are in their appearance ; and the scarlet that covers them is a proper livery for sanguinary homicides. Soldiers are kept like devoted victims, ever ready for sacrifice ;
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and the art of their commanders is to occupy the subalterns and men with such a catalogue of trifling duties, as allow no time to reflect on the barbarity of their pursuit, or the slavery of their profession. No men are so ill treated—no men are so dangerous to felicity. They are isolated from general society, and have no cause to love it: they are taught to laugh at death, and embrace it willingly at all times and on all occasions. It is evident then their own existence is of little value: and when a large body of men are careless of their own lives, how can we imagine they will be tender of the feelings of others? The Soldiery (meaning the soldiery of the army of our said Lord the King) are governed by a system of laws that make humanity blush; and the halbert is a stake where juvenile indiscretion is expiated by a disgraceful, severe infliction of punishment. The privates are allowed a sufficiency to support the strength requisite for massacre; but no indulgence must be tasted, lest they should overvalue their existence. Their station can never rise above misery; and their life is devoted to boyish ceremonies and ridiculous parade, till some obstinate Monarch, or his belliciferous son, strews the field of honour with suffering humanity and premature death. Unfortunately for us Englishmen, every war here must be a King's war, and the People must support it! fight for it! die for it! The People know of no quarrel requiring this fatal mode of arbitration. Is it not fair then to say, Kings should be the only sufferers? If blood be necessary, should not their blood be spilt, and in their own disputes too? Should not their purses disburse the enormous expences of this fatal system? Why should the peaceful husbandman, who never dreamt of arms, become a party in a destruction he detests? Why should the quiet passenger be crimped, manacled, and forced into the field? Why should the industrious labourer be galled with taxes that exceed probability, and defy the powers of a common arithmetician to calculate? Another congregation of individuals, that creep round golden villainy as ivy round the oak, are known by the name of the Clergy (meaning the Clergy of the Church of England as by law established)—a race more detestable than the Military; for with them (meaning the aforesaid Clergy) hypocrisy is added to cruelty, and eighteen millions stamped with the human figure have crammed the capacious maw of death to defend their

metaphysical speculations, and make the crozier outshine the sceptre! An idiot comprehends the soldiers' destination; nay, they do not disguise their views, but pride themselves on their promptness to destroy: but the priest acts for ever under disguise. He seizes the first inspiration of the infant to affix the ecclesiastical stamp; and before the faculties can investigate the tenets imposed, is provided with a determinate character! The priest prepares youth for subjection, and trenches the furrow for the yoke of kings! He acts from a pretended heavenly authority; and with this he seals our abjection, and his own exclusive indulgence. He paints the heavenly Father in any colours or form calculated to promote his interest: and under the name of that God we look up to as the fountain of justice, the holy swindler plucks the farmer of his tythes, and turns religion into a trade. Ignorance and fear are the agents of his fraud: his right hand holds persecution, and his left superstition. Thus are we (meaning the people of this kingdom) perplexed with another description of Tyrants, that, like the two former, increase our miseries and decrease our happiness. But these raven hacks of the throne are not content, like the Governors or the Military, with tormenting us on earth, but assume the right of extending their severity to regions yet unknown. They forestal the sentence of the Almighty; and for a church douceur will provide the rich a place in heaven above, or condemn the pauper criminal with a pit in hell below!—They impose duties on mankind that they never follow. They preach poverty, abstinence, and virtue, to their auditors; but they themselves riot in luxury, roll in riches, and are flagrantly vicious! They hallow, with the sanction of divinity, state robbery; and the Throne, in grateful return, winks at clerical peculation. The books of Moses and Christ (which answer to the cobwebbed charters of state) were never written by the men whose names they bear, nor by their command: they were found by accident, have confessedly been interpolated, and are in themselves sometimes contradictory—sometimes unintelligible. These are the right-hand defenders of Despotism; and our first James was heard to say, 'No Bishop, no King!'—The next portion of the villainous procession issue from Westminster-Hall. There heterogenous sophistry triumphs over truth, and the mysticism of logic smothereth the pleas of equity. The simple
decisions

decisions of 'right and wrong' are by these ingenious law-worms spun into immense folios, and the deficiency of written ordinance is supplied by a *lex non scripta*: and the absurdities of immemorial custom frequently confound common sense, and pervert the stream of justice! Lawyers thrive on misery, and grow fat as others decline: they are the reverse of propriety, and continue the very dissention 'tis their duty to remove. They have a fee for every thing: the client pays when injured, and justice is made expensive. They are the Tyrants of property: they give unbounded latitude to Royal Villainy; and the smile of a Monarch will relax the rigidity of the Judge." In contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and also against the peace of our said Sovereign Lord the King, his crown and dignity.

And that the said John Smith, so being such person as aforesaid, and maliciously and seditiously contriving and intending to scandalize, defame, and bring into hatred and contempt, the Government of this kingdom by law established, and to represent the Government of this kingdom as by law established to be an usurped, unjust, and tyrannical Government, and thereby to raise and excite a spirit of disaffection and sedition in the minds of the liege subjects of our said Lord the King against our said Lord the King and the Government of this kingdom, did, on the 17th of November, in the year aforesaid, in Middlesex aforesaid, in the parish aforesaid, maliciously and seditiously publish, and cause and procure to be published, a certain other libel, containing therein, among other things, divers scandalous, malicious, and seditious matters and things, of and concerning our said Lord the King and the Government of this kingdom, to the tenor and effect following: (that is to say)—" 'Tis our Governors (meaning the Governors of the people of this kingdom) that stand foremost in the list of inimical! They monopolize a power that is both fatal and unjust. Part of this power they grossly purloined—the other moiety they procured by complicated chicanery: and the sole authority they can shew for the continuance and enjoyment of either half, is force, or precedent of prior possession. Should the validity of former claimants, from whom they are immediately descended, be questioned or disputed, the immense proof to the justice of their unhallowed claim is some obsolete charter ;

charter ; and our debasement is warranted, proved, and guaranteed, by the covering of a rotten sheep, and the splashings of stale ink ! Who, Countrymen, but the interested, can for a second suppose that any grant from an ignorant, terrified, or corrupt ancestry, can coerce an enlightened, courageous, incorruptible posterity ? If the decisions of our progenitors are irrevocable, and must for perpetuity bind us to misery, then are we born in slavery, and instead of blessing their memory, we should wail and gnash our teeth at the very name of these detestable proscribers. But, Citizens, this is the reverse of truth ; for we are born free. Slavery is an imposition that no parents could entail upon us—no authority justify ! Nature has written our freedom in characters that may be blurred, but they can never be obliterated ! Notwithstanding the imperfect plea brought forth in support of royal fraud, the injured sufferers must not even breathe resentment, or sigh out a bitter complaint : their mouths are instantly closed, and organized cruelty is ready to counteract the feeble efforts of spiritless wretchedness :” In contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our Sovereign Lord the King, his crown and dignity.

And that the said John Smith, so being such person as aforesaid, and seditiously contriving and intending to scandalize, defame, and bring into hatred and contempt the Army of our said Lord the King and the Government of this kingdom, and to insinuate and cause it to be believed that the Army of our said Lord the King was used and employed by the Government of this kingdom as an instrument of tyranny and oppression over the people thereof, and thereby to raise and excite groundless jealousies and discontents in the minds of the liege subjects of our said Lord the King, did, on the said 17th day of November, in the year aforesaid, in Middlesex aforesaid, in the parish aforesaid, maliciously and seditiously publish, and cause and procure to be published, a certain other printed libel, containing therein, amongst other things, divers scandalous, seditious, and libellous matters and things, of and concerning the said Army of our said Lord the King and the Government of this kingdom, to the tenor and effect following : to wit—“ The Military (meaning the Army of our said Lord the King) is a collateral

lateral engine used by Government (meaning the Government of this kingdom) to give efficiency to flimsy claims, and enforce compliance to arbitrary commands. Soldiers (meaning the foldiers of the Army of our said Lord the King) are by profession slaughterers; and their fame, glory, and accomplishments depend on the speed, certainty, extent, and insensibility of their murdering faculties.—They are separated from the residue of their brethren by the singularity of their views: their unsocial bands are kept apart from the mass, that their cruel spirits may not be dulled by sentiments of benevolence—that the ties of civic friendship, or rich consciousness of family endearment, may not increase their value for life. They are as unique in their ends as they are in their appearance: and the scarlet that covers them is a proper livery for sanguinary homicides. Soldiers are kept like devoted victims, ever ready for sacrifice; and the art of the commanders is to occupy the subalterns and men with such a catalogue of trifling duties, as allow no time to reflect on the barbarity of their pursuit, or the slavery of their profession. No men are so ill treated—no men are so dangerous to felicity! They are isolated from general society, and have no cause to love it. They are taught to laugh at death, and embrace it willingly at all times and upon all occasions. It is evident then their own existence is of little value: and when a large body of men are careless of their own lives, how can we imagine they will be tender of the feelings of others?" In contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our Sovereign Lord the King, his crown and dignity.

And that the said John Smith, so being such person as aforesaid, and wickedly, maliciously, and seditiously contriving and intending to scandalize, defame, and bring into hatred and contempt the Clergy of the Church of England as by law established, did, on the said 17th day of November, in the year aforesaid, in Middlesex aforesaid, in the parish aforesaid, wickedly, maliciously, and seditiously publish, and cause and procure to be published, a certain other libel, containing therein, among other things, divers wicked, scandalous, malicious, and seditious matters and things, of and concerning the Clergy of the Church of England as by law established, according to the tenor and effect following: to wit—"Another congregation of individuals, that creep round golden villainy as ivy round the oak, are known by the name of the Clergy
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(meaning the Clergy of the Church of England as by law established)—a race more detestable than the Military; for with them hypocrisy is added to cruelty, and eighteen millions stamp with the human figure have crammed the capacious maw of death, to defend their metaphysical speculations, and make the crozier outshine the sceptre! An idiot comprehends the soldiers' destination; nay, they do not disguise their views, but pride themselves on their promptness to destroy: but the priest acts for ever under disguise. He seizes the first inspiration of the infant to affix the ecclesiastical stamp; and before the faculties can investigate the tenets imposed, is provided with a determinate character. The priest prepares youth for subjection, and trenches the furrow for the yoke of Kings! He acts from a pretended heavenly authority; and with this he seals our abjection and his own exclusive indulgence. He paints the celestial Father in any colours or form calculated to promote his interest; and under the name of that God we look up to as the fountain of justice, the holy swindler plucks the farmer of his tythes, and turns religion into a trade. Ignorance and fear are the agents of his fraud: his right hand holds persecution, and his left superstition. Thus are we perplexed with another description of Tyrants, that like the two former increase our misery and decrease our happiness! But these raven hacks of the throne are not content, like the Governors or the Military, with tormenting us on earth; but assume the right of extending their severity to regions yet unknown. They forestal the sentence of the Almighty; and for a church douceur will provide the rich a place in heaven above, or condemn the pauper criminal with a pit in hell below. They impose duties on mankind that they never follow: they preach poverty, abstinence, and virtue, to their auditors; but they themselves riot in luxury, roll in riches, and are flagrantly vicious! They hallow, with the sanction of divinity, state robbery; and the Throne, in grateful return, winks at clerical peculation. The books of Moses and Christ (which answer to the cobwebbed charters of state) were never written by the men whose names they bear, nor by their command: they were found by accident, have confessedly been interpolated, and are in themselves sometimes contradictory—sometimes unintelligible. These are the right hand defenders of despotism; and our first James was heard to say, 'No Bishop no King!' In contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our Sovereign Lord the King, his crown and dignity.

*The Pleadings opened by Mr. ABBOT, and the Case
by Mr. LAW, as follows.*

MAY IT PLEASE YOUR LORDSHIP.

GENTLEMEN OF THE JURY,

IN the inevitable and much regretted absence of my learned friend, Mr. Attorney General, to whom the discharge of this duty more immediately belongs, it has fallen to my lot to have the honour to state to you the circumstances of this case. The multitude of libels with which the press has lately teemed, and which have been thrown in circulation, and which have been published with an industry unknown before in history, has made it peculiarly incumbent on those who have it in charge to select for prosecution and punishment those who seem to stand forward as fit subjects of reprehension; and, in the exercise of their duty, they have been induced to bring, and properly to bring before you, this defendant, as one of the publishers whose name appears in the front of a publication, as the avowed circulator of this avowed scandalous and wicked libel; the title of which pamphlet might have apprized the publisher not merely of the equivocal contents, but that it was inauspicious to good order and the rights of society. It states itself to be "A Summary of the Duties of Citizenship! written expressly for the Members of the London Corresponding Society; including Observations on the contemptuous Neglect of the Secretary of State with regard to their late Address to the King!—Reverence the Laws, and let your Benevolence be unbounded!"

Gentlemen, Any person to whom a publication of that sort was brought, before he had consented to have his name put down upon it, as the avowed publisher of it, would most surely have read it; and he must then certainly have seen it was a thing most unfit to be offered to the eye of the public, as containing principles which not only sap and undermine, but immediately attack and assault the bulwarks of religious, political and civil duty.

Gentlemen, This publication, I venture to say, is the most mischievous of those of late times. There is not any thing venerable in the institutions of the state, there is not any thing sacred or venerable in the orders of the

state, there is not any thing to which the attention of mankind ought to be peculiarly attracted, which is not studiously violated in this wicked work. First of all, those honourable and gallant persons who constitute the defence of their country; they are held up to public odium, they are pointed out to their fellow subjects as objects not of suspicion only, but of detestation. With respect to them particularly, it is not this or that particular form of government that is attempted to be execrated, that is censured or blamed, or that is reprobated in this work, but every thing like civil authority, all government, are the objects of reprobation in this work. It states that the "Tyrants of England may be subdivided into several classes; the most fatal to felicity and the progress of benevolence are Governors of all descriptions, Priests, Soldiers, and Lawyers!—Governors of all descriptions! Of course it must predicate the slavery of all governors. It states the military establishment to be "a collateral engine used by Government to give efficiency to flimsy claims, and enforce compliance to arbitrary commands."

The officers, he says, are, by profession slaughterers; and then, gentlemen, for a most mischievous and abominable purpose, and to excite mutiny and sedition in the soldiery, whom these persons are appointed to command, stating them to be by profession slaughterers; that they are separated from the rest of mankind, deprived of the ordinary accommodations and indulgencies of mankind, marking them out as persons in a despised and degraded separation, and endeavouring by the infusion into their minds of this sense of their situation, to induce them to avoid subjection, and the military defence of the country.

Gentlemen, Then he proceeds to the ecclesiastical establishment; and he treats the clergy as "a race more detestable than the military—for with them hypocrisy is added to cruelty, and EIGHTEEN MILLIONS stamp'd with the human figure have crammed the capacious maw of death to defend their metaphysical speculations, and make the crossier outshine the sceptre!"

He calls them "holy swindlers, ravens of the throne. They forestal the sentence of the Almighty; and, for a church douceur, will provide the rich a place in heaven above, or condemn the pauper criminal with a pit in hell below."

Gentlemen,

Gentlemen, Is not the author of this pamphlet, and is not the publisher of it, who is exactly equal in crime with the other, the men who attack the foundation of all our faith, the holy records of all that we believe, and the assurances of all that we hope for; does not this endeavour, by exciting in our minds a disbelief of the truth of religion, to render us insensible to those motives which religion suggests, and to lead us by the hand of anarchy to the very sinks of private confusion and mischief? He says, "The books of Moses and Christ, (which answer to the cobweb'd charters of state) were never written by the men whose names they bear, nor by their command; they were found by accident, have confessedly been interpolated, and are in themselves sometimes contradictory, sometimes unintelligible. These are the right hand defenders of despotism; and our first James was heard to say, 'No bishop, no king!'"

Gentlemen, What can be the aim and object of this attack on religion, on the persons who are the expositors of those holy books, of all the sacred institutions of their country? Can it be any other than an endeavour to burst off all restraint, by subverting the people of this country from every principle of religion, to fit and prepare them in this country to the mischief which has been on similar principles atchieved in a neighbouring country? It is not to enlarge the limits of human knowledge, it is not to explain or enforce the duties of any one principle of practical morality, that this is written. I defy the learned gentleman who is charged with the defence of this man to attribute it to one venial purpose, or to apply it to any one honourable or honest intention. It is the most complete confusion issuing from a malignant mind, that I think ever was brought before a jury; and I should disgrace the subject if I thought it did not carry its own comment upon it. It will be impossible for the defendant to pretend ignorance of the contents he was the publisher. On the face of it, he must have known what it was he did publish. A man must at least have been apprized of its contents, or ought to be so: and whether he be or not, he stands in the situation of responsibility. The liberty of the press is not involved in this; the liberty of the press is best preserved by avoiding the abuse of it; and if it should be necessary to restrain it, it will be because every honest, sober-minded person almost wished to surrender a part of that

that liberty which is so grievously abused. But as long as juries do what I wish now you will do, such a restraint will be superfluous, and we shall continue to enjoy, in all its latitude, that liberty which is the boast and glory of this country, so long as we have enjoyed it. It can only be by that maintained, by the prosecution and punishment of such persons.

Gentlemen, I am sure you are detained by these observations from the discharge of a duty which you will honestly and readily perform, and make this man amenable to the punishment which he has so richly deserved.

Gentlemen, I shall lay before you the *ordinary proof* that this pamphlet was bought at his shop, and that his name is to it; and if he cannot prove the contrary, and I am sure he cannot, without perverting all the understanding you possess, without perverting the meaning of all terms that occur in *ordinary* language, it will then be your duty, and a duty you will readily discharge, to find the defendant guilty.

THE EVIDENCE FOR THE PROSECUTION.

JAMES WALSH sworn.

Examined by Mr. GARROW.

Q. Be so good to look at that pamphlet. Did you purchase that at the shop of the defendant?

A. Yes, on the 17th of November, 1795. I marked it at the time I purchased it. My own mark is now upon it.

Q. I observe there is here on the title-page, as one of the publishers, J. Smith, Portsmouth-street, Lincoln's-inn-fields. Was it there where you purchased this book?

A. Yes.

CROSS EXAMINED BY MR. GURNEY.

Q. Of whom did you purchase it?

A. Of a woman in the shop.

Q. Did you go in the ordinary course of business to purchase this, or was you sent to purchase it?

A. I was sent to purchase it, if it was to be sold.

JOHN PANTER sworn.

Examined by Mr. WOOD.

Q. Did you go with Walsh to Smith's shop on the 17th of November, 1795?

A. Yes.

Q. Did you purchase that pamphlet there?

A. Yes; it was purchased in my presence.

Q. Of

Q. Of whom?

A. Of *Mrs.* Smith. I do not know that it was *Mrs.* Smith; of a woman, a lusty woman, in Portsmouth-street.

Q. Did you put your name upon it?

A. I did.

Q. And that is the very pamphlet?

A. It is.

Q. Read the title; published by whom?

A. J. Smith, Portsmouth-street, Lincoln's-inn-fields.

Mr. GARROW. My Lord, we will beg leave to read some part; but we have no objection to the whole being read, if it is wished by the defendant's counsel, viz.

" The tyrants of England may be subdivided into several classes; the most fatal to felicity and the progress of benevolence, are Governors of all descriptions, Priests, Soldiers, and Lawyers !

" The slaves of England can only be portioned into two lots—slaves through ignorance, and willing slaves.

" 'Tis our Governors that stand foremost in the list of the inimical !—They monopolize a power that is both fatal and unjust: part of this power they grossly purloined—the other moiety they procured by complicated chicanery; and the sole authority they can shew for the continuance and enjoyment of either half, is force, or precedent of prior possession. Should the validity of former claimants, from whom they are immediately descended, be questioned or disputed, the immense proof to the justice of their unhallowed claim is some obsolete charter; and our debasement is warranted, proved, and guaranteed, by the covering of a rotten sheep, and the splashings of stale ink !

" —Who, countrymen, but the interested, can, for a second, suppose that ANY GRANT from an ignorant, terrified, or corrupt ancestry, can coerce an enlightened, courageous, incorruptible posterity? If the decisions of our progenitors are irrevocable, and must for perpetuity bind us to misery, then are we born in slavery, and instead of blessing their memory, we should wail and gnash our teeth at the very name of these detestable proscribers ! But, citizens, this is the reverse of truth, for we are born free; slavery is an imposition that no parents could entail upon us—no authority justify !—Nature has written our freedom in characters that may be blurred, but they can never be obliterated ! Notwithstanding the imperfect plea brought forth in support of royal fraud, the injured sufferers must

" not

“ not even breathe resentment, or sigh out a bitter complaint—their mouths are instantly closed, and ORGANIZED CRUELTY is ready to counteract the feeble efforts of spiritless wretchedness.

“ The Military is a collateral engine used by Government to give efficiency to flimsy claims, and enforce compliance to arbitrary commands. Soldiers are by profession slaughterers, and their fame, glory, and accomplishments, depend on the speed, certainty, extent, and insensibility of their murdering faculties. They are separated from the residue of their brethren by the singularity of their views; their unsocial bands are kept apart from the mass, that their cruel spirits may not be dulled by sentiments of benevolence; that the ties of civic friendship, or the rich consciousness of family endearment, may not increase their value for life: they are as unique in their ends as they are in their appearance, and the scarlet that covers them is a proper livery for sanguinary homicides. Soldiers are kept like devoted victims, ever ready for sacrifice; and the art of their commanders is to occupy the subalterns and men with such a catalogue of trifling duties, as allow no time to reflect on the barbarity of their pursuit, or the slavery of their profession. No men are so ill treated—no men are so dangerous to felicity; they are isolated from general society, and have no cause to love it: they are taught to laugh at death, and embrace it willingly at all times, and on all occasions. It is evident then their own existence is of little value; and when a large body of men are careless of their own lives, how can we imagine they will be tender of the feelings of others? The soldiery are governed by a system of laws that make humanity blush; and the halbert is a stake where juvenile indiscretion is expiated by a disgraceful, severe infliction of punishment. The privates are allowed a sufficiency to support the strength requisite for massacre, but no indulgence must be tasted, lest they should overvalue their existence;—Their station can never rise above misery, and their life is devoted to boyish ceremonies and ridiculous parade, till some obstinate monarch, or his belligerous son, strews the field of honor with suffering humanity and premature death.

“ Unfortunately for us Englishmen, every war here must be a King's war, and the people must support it! fight for it! die for it!—The people know of no quarrel requiring this fatal mode of arbitration!—Is it not fair
“ then

“ then to say, Kings should be the only sufferers? If blood
 “ be necessary, should not their blood be spilt, and in their
 “ own dispute too? Should not their purses disburse the
 “ enormous expences of this fatal system? Why should
 “ the peaceful husbandman, who never dreamt of arms,
 “ become a party in a destruction he detests? Why should
 “ the quiet passenger be cramped, manacled, and *forced*
 “ into the field? Why should the industrious labourer be
 “ galled with taxes that exceed probability, and defy the
 “ powers of a common arithmetician to calculate?

“ Another congregation of individuals that creep round
 “ golden villainy as ivy round the oak, are known by the
 “ name of **THE CLERGY!**—a race more detestable than
 “ the Military—for with them hypocrisy is added to cru-
 “ elty, and **EIGHTEEN MILLIONS** stampd with the
 “ human figure have crammed the capacious maw of death
 “ to defend their metaphysical speculations, and make the
 “ crozier outshine the sceptre!—An idiot comprehends the
 “ soldiers’ destination, nay they do not disguise their
 “ views, but pride themselves on their promptness to de-
 “ stroy; but the priest acts for ever under disguise—he
 “ seizes the first inspiration of the infant to affix the eccle-
 “ siastic stamp, and, before the faculties can investigate the
 “ tenets imposed, is provided with a determinate character!
 “ The priest prepares youth for subjection, and trenches the
 “ furrow for the yoke of kings. He acts from a pretended
 “ heavenly authority, and with this he seals our abjection
 “ and his own exclusive indulgence. He paints the Celestial
 “ Father in any colours or form calculated to promote his
 “ interest; and, under the name of that God we look up to
 “ as the fountain of justice, the holy swindler plucks the
 “ farmer of his tithes, and turns religion into a trade: ig-
 “ norance and fear are the agents of his fraud; his right
 “ hand holds persecution, and his left superstition.

“ Thus are we perplexed with another description of
 “ tyrants, that, like the two former, encrease our misery and
 “ decrease our happiness! But these raven hacks of the
 “ throne are not content, like the Governors, or the Mili-
 “ tary, with tormenting us on earth, but assume the right of
 “ extending their severity to regions yet unknown. They
 “ forestal the sentence of the Almighty; and, for a church
 “ douceur, will provide the rich a place in heaven above, or
 “ condemn the pauper criminal with a pit in hell below!—
 “ They impose duties on mankind that they never follow:

“ they

“ they preach poverty, abstinence, and virtue, to their
 “ auditors ; but they themselves riot in luxury, roll in
 “ riches, and are flagrantly vicious ! They hallow, with
 “ the sanction of divinity, state-robbery ; and the Throne,
 “ in grateful return, winks at clerical peculation. The
 “ books of Moses and Christ (which answer to the cob-
 “ webbed charters of state) were never written by the men
 “ whose names they bear, nor by their command : they
 “ were found by accident, have confessedly been interpo-
 “ lated, and are in themselves sometimes contradictory—
 “ sometimes unintelligible. These are the right-hand
 “ defenders of despotism ; and our first James was heard
 “ to say—‘ No bishop, no king !’

“ The next portion of the villainous procession issue
 “ from Westminster-hall. There heterogeneous sophistry
 “ triumphs over truth, and the mysticism of logic smothers
 “ the pleas of equity ! The simple decisions of ‘ Right
 “ and Wrong’ are, by these ingenious law-worms, spun
 “ into immense folios, and the deficiency of written ordi-
 “ nance is supplied by a *lex non scripta* : and the absurdities
 “ of immemorial custom frequently confound common
 “ sense, and pervert the stream of justice ! Lawyers thrive
 “ on misery, and grow fat as others decline : they are the
 “ reverse of propriety, and continue the very dissension ’tis
 “ their duty to remove : they have a fee for every thing ;
 “ the client pays when injured, and justice is made expen-
 “ sive. They are the tyrants of property : they give un-
 “ bounded latitude to royal villainy, and the smile of a
 “ monarch will relax the rigidity of the judge.”

Mr. GURNEY desired page 11 and 12 to be read : viz.

“ You, Citizens, that I have the honour to address, are
 “ in neither of these predicaments : you are not ignorant
 “ that you are slaves, nor are you willing to continue slaves.
 “ Your Address to the Throne proves that you are sensible
 “ of the infringements on your birth-right ; and the con-
 “ stancy of your perseverance in the Cause of Redress will
 “ proclaim aloud how unwilling you are to retain the in-
 “ famous brand of abjection.

“ ’Tis certain I am but a dwarf in the general scale,
 “ yet, on this occasion, I am animated with gigantic feel-
 “ ings ; and wish, with as strong aspirations as, perhaps,
 “ ever shook an individual frame, that I possessed the ac-
 “ cumulated wisdom of past and present ages, that I might
 “ with

" with certainty of success chalk out the plan to be pur-
 " sued at this important crisis. I am anxious for the fate
 " of all enlisted in the behalf of freedom ; and the fervour
 " of affection to promote unbounded benevolence gives
 " life to my thoughts ! Believe me, Citizens, I love the
 " cause so well, I tremble lest any ill-advised labourer
 " in the vineyard of liberty should fully or disgrace the
 " character of a man. As your views are noble, let your
 " conduct approach perfectibility. Much depends on the
 " mode of application. You have justice on your side,
 " and justice must ultimately triumph ! Your efforts are
 " yet in their infancy : then let not the morning of your
 " glorious enterprize be stained by petulant anger and un-
 " manly rudeness : Be calmly intrepid—obstinately cou-
 " rageous ; but let not the Russian thought of violence ob-
 " trude on your sacred resolutions.

" Recollect what 'tis you struggle for—' The removal
 " of prejudice, the bannation of tyranny, the establishment
 " of the injured majesty of peace, and comprehensive
 " liberty !'

" Surely you can never employ means destructive to the
 " end proposed, and attempt to introduce peace by anarchy
 " and war ? You cannot labour for the abolition of one
 " tyrannic system only to introduce another ? Can you
 " expect, or, in the wildness of an over heated imagina-
 " tion, suppose, that the accumulated errors of many cen-
 " turies can be changed into the brilliancy of truth within
 " the duration of a second ? And can you wildly imagine,
 " should the eloquence of words fail in their effect, that
 " the bayonet can produce conviction ?—No ! I cannot
 " suppose you inhuman or weak enough to listen to the
 " suggestions of force, or employ the very coercion that
 " you so feelingly represent as wanton, brutal, bloody, in
 " your oppressors. Raise yourselves eminently above the
 " wretches, and despise the arms that they rely on.

" The application to the throne for parliamentary re-
 " formation carries on the indorsement of the petition the
 " certainty of refusal ! and if granted, I fear would be
 " attended with few of those blessed effects you so fondly
 " expect. I should gladly be introduced to the monarch
 " who would throw aside the expensive pageants of his
 " state, diminish his crowded establishments, and reduce
 " himself to the simplicity of a good chief magistrate.
 " Where shall we find this heroic being—this sublime
 " mortal ?

" mortal?—Not in this island, I fear! Yet your address
 " requires all this: or it requires nothing valuable, if at-
 " tained! You demand an equal representation: this, if
 " granted, would make the democracy of the legislation
 " too numerous for corruption, and the people would have
 " a house full of friends, that would defend their privi-
 " leges, and resist coronal encroachments. And you ex-
 " pect the Crown will, by its own act and deed, abridge
 " the Crown of that unbounded power it so much delights
 " in? I believe this is much the same as asking haughty
 " Episcopacy to lay down pontifical splendor, and conform
 " to the simplicity of Christ, whose cross they bear, whose
 " example they profess to imitate. When this is, or can
 " be effected, I shall have strong hopes of success at Buck-
 " ingham-house. No, my friends, you must patiently
 " wait till the GENERAL VOICE proclaims, in irre-
 " sistible articulation, the obvious necessity of a Reform.
 " Then refusal would be dangerous, if not impossible!"

MR. GURNEY.

GENTLEMEN OF THE JURY,

The learned Counsel for the Crown having closed the
 evidence upon which he relies in proof of this indictment,
 I have now the honour to request your attention to the
 defence, which I trust will sustain the plea that the de-
 fendant has placed upon the record—that he is Not Guilty
 of the offence with which he is charged.

I cannot however enter upon that defence, without com-
 plaining of it as an hardship, and a grievous hardship, that
 I am called upon to make it in this place. In the immense
 expenditure of the government of this country, it makes
 little or no difference whether a prosecution be carried on
 in the Court of King's Bench or at the Quarter Sessions :
 but to a poor man, to the support of whose wife and family
 the profits of a small pamphlet-shop are so inadequate that
 he is obliged to seek for employment out of doors, leaving
 the management of his shop to his wife—for him to be
 prosecuted in this court, is to be oppressed by an expence
 which he is unable to bear. By the rules of this court, a
 defendant is compelled to plead by a particular day. His
 plea however cannot be received, until he has taken out a
 copy of the indictment. For want of the few guineas
 necessary for that purpose, he was nearly—very nearly
 indeed—

indeed—deprived of that right which belongs to the vilest and most atrocious criminals—the right of being tried by a jury of his country. For if he had not, by means which are too painful to mention, raised that money by that particular day, judgment would have passed against him by default, and he must then have received the sentence of the court without a trial. By this mode of prosecution, therefore, a defendant is punished at a time when, both by law and by common sense, he is presumed to be innocent—namely, before his trial: and in many cases, it may operate to deprive a man of any trial at all. By another mode of proceeding, this hardship would not be occasioned.

Gentlemen, the indictment which you are sworn to try, states “ that the defendant, being a wicked, malicious, and
 “ ill-disposed person, and greatly disaffected to our Lord
 “ the King, and the government of this kingdom, and
 “ wickedly, maliciously, and *seditionously* contriving and in-
 “ tending to scandalize and defame, and bring into hatred
 “ and contempt, our said Lord the King, and the estab-
 “ lished government, religion, and laws of this kingdom,
 “ and the Clergy of the Church of England as by law
 “ established, and the Army of our said Lord the King,
 “ and to insinuate and cause it to be believed, that the
 “ government of this kingdom as by law established is an
 “ usurped, unjust, and tyrannical government, and that the
 “ army of our said Lord the King is used and employed
 “ by the government of this kingdom as an instrument of
 “ tyranny and oppression over the people thereof, and
 “ thereby to raise and excite SEDITION, discontent, and
 “ irreligion, in the minds of the liege subjects of our said
 “ Lord the King, wickedly, maliciously, and *seditionously*, did
 “ publish a certain libel, containing therein among other
 “ things divers wicked, scandalous, malicious, and *seditious*
 “ matters,” &c.

This is the charge made by the indictment; every word of which the learned Counsel for the Crown must prove, or he cannot entitle himself to your verdict.

Gentlemen, if you had tried this cause five years ago, you would have been told, that all you had to do was to find the fact of publication, and the meaning of the innuendoes; that is to say, those parentheses which are inserted in the indictment, to define and limit the meaning of the expressions; and that whether the work was or was not

a libel, or such a libel as the record charged it to be—and whether the intention of the defendant was criminal as charged by the indictment, or innocent as alledged by his plea, were questions of law for the subsequent determination of the court. But now, your jurisdiction is full, ample, and complete. By that Act of Parliament which is so well known by the name of Mr. Fox's Libel Bill, you are empowered to give a verdict on the whole matter in the issue which you are sworn to try.

The issue consists of the charge in the indictment and the defendant's plea of Not Guilty. In that, four points are included. Four averments are made by the Crown, every one of which is denied by the prisoner; and every one of which the Crown must prove by evidence, to entitle itself to your verdict.

The first is, that the innuendoes ascribe the true and genuine sense to those passages of the pamphlet to which they are applied. Upon that point I shall raise no question.

The second is, not only that the pamphlet is a libel, but that it is such a libel as it is charged by the indictment to be—containing divers wicked, scandalous, malicious, and *sedition* matters.

The third is, that the defendant published this pamphlet, being such a libel; and

The fourth, that he published it for the purposes and with the motives and intentions charged by the indictment. If the Crown fails in any one of these three last averments, my client is entitled to your verdict of acquittal.

Gentlemen, I mean to contend, first, that this pamphlet is not a libel of the description charged by the indictment—that it is not a *sedition* libel; and

Secondly, that the Crown has not proved the defendant did publish it—much less that he published it for the purpose of exciting *sedition*.

Let us see how the case on the part of the crown is attempted to be made out. The learned Counsel for the Crown stated, in the course of his opening, that this was a pamphlet calculated to sap the foundations of all order and morality in society, and to degrade and vilify every thing which we prize and value. I confess it appears to me, that in so considering it, he has listened rather to the suggestions of his fears than of his judgment. For if ever there was a pamphlet, which, if it did aim at mischief,

mischievous, was more completely impotent and inefficient than another, it is the one which is now the subject of your inquiry; and I think the stupidity of it afforded sufficient security that not any man would be injured by its contents: because, I will venture to say, that there is not a man to be found, who, from pure choice, ever drudged half way through it. I have been under the necessity, because the duty of my profession required it, of submitting to the drudgery of reading it; but a more irksome duty I never had cast upon me.

Gentlemen, I do not mean to say, that because a pamphlet is foolish, it is not therefore wicked. Certainly not. But the danger to be apprehended from it, will undoubtedly be more or less, according to the ability or the want of ability with which it is written.

The learned gentleman then proceeded to say, that if ever a *previous restraint* upon the press should be found necessary, it would arise from publications such as the present. I confess I was chilled with horror when I heard that intimation given, because I have found by experience, that intimations of that sort are not thrown out by the agents of the Crown without some design; and my blood would boil with indignation, if there could be found a man in this country who would venture to state broadly and boldly, that at any time, and under any circumstances, a *previous restraint* upon the press was fit to be imposed. There is not, I am sure, an Englishman who is conversant with the history of his country, and recollects the dreadful consequences that ensued from that restraint, when it did exist, who does not heartily detest its memory, and would not most strenuously oppose its revival.

Towards the close of his speech, the learned gentleman informed you, rather by the bye, (for it was not made so prominent a part of the speech as to attract your attention) that he should give you "the ordinary proof of publication." I know full well what that phrase means—it means that which was "the ordinary proof of publication" before the enacting of the libel-bill to which I have before alluded. Upon that subject I shall have occasion to observe hereafter.

Gentlemen, It is not necessary for me to follow the learned gentleman any further in what *he did say*; but I cannot help remarking, that something is to be gathered from what he *omitted to say*. I watched his speech with
the

the closest and most anxious attention, for the purpose of discovering on what broad and comprehensive legal principle this indictment was founded. It must be broad and comprehensive, because the charge in the indictment is so. The indictment does not contain several separate and distinct charges. They are all linked and fastened together. Together they must stand or fall. And if I succeed in repelling any one, I am entitled to your verdict. Unless the charge of *Sedition* can be supported, the prosecution fails. Sedition stands in every line—sedition is the gravamen of the indictment.

Sedition being thus the most prominent part of the accusation, I did expect the learned gentleman would have given some sort of definition of it; and I was curious to know what definition his ingenuity could suggest, which could bear even the most remote application to the pamphlet that is now the subject of your consideration. What is sedition? It is not aameleon, which varies with every ray of light; it is not a Proteus, which changes with the passing hour; it is not of a fleeting and transitory nature; it is not this thing to-day, and that to-morrow.—No; the term itself conveys a specific and determinate sense, which is the same now as it ever has been. Sedition means “*tumult, popular commotion, insurrection;*” and therefore when this pamphlet is charged to be “*seditious,*” it is charged to be a pamphlet exciting the people to tumult, commotion, and insurrection; and when the motives of this defendant are charged to be seditious in publishing this pamphlet, he is charged with doing so for the purpose of, by that means, exciting tumult, commotion, and insurrection.

Gentlemen, when I recollect what the pamphlet really is, I am at a loss to conceive how this charge of its being a *seditious* libel can by any possibility be maintained for a single moment. On the contrary, it may be clearly proved from various passages of the publication itself, that the author’s views and dispositions are utterly repugnant to sedition.—There appear to me but three ways in which it is possible to attempt to substantiate the charge in the indictment, and neither of them I think will bear examination.

It must be supposed, either that the definition of sedition which I have given is incorrect—or that the anti-seditious sentiments in the pamphlet are thrown in merely for the purpose of masking and disguising the real design of the
author

author—or that my definition being correct, and the anti-seditious sentiments *bona fide*, still, as the pamphlet contains injurious reflections on particular descriptions of men, and on the government itself, that still it is such a libel as it is charged by the indictment to be. I am perfectly indifferent which of these grounds is taken, confident as I am, that this part of the charge cannot be maintained but in one of these three ways, and equally confident that not one of them can be supported.

With respect to the definition of sedition which I have given, I will venture to throw out the boldest challenge to any man to raise a doubt upon it. I am warranted in it by the best and highest authorities, and as the result of them all by the definition of Dr. Johnson, who is undoubtedly the best authority in the English language.

But our language is not singular in affixing this signification to the term. It is the same in the Latin, from which the word is derived: it is the same in every other language into which it has found its way. *Seditio* in the Latin, *sedition* in the French, *sedizione* in the Italian, all coincide in giving “tumult, popular commotion, insurrection,” as the genuine meaning of the term.

Having established that, let us see whether the anti-seditious sentiments contained in the pamphlet are illusory or sincere. It is impossible that it can have escaped your notice, that whatever disapprobation the author of this pamphlet discovers of the existing establishments of the country, yet in every part of it he protests with the utmost earnestness against all tumult and violence, or, in legal language, against all *sedition*. He is a good deal like a traveller, whose attention is attracted by a large building on the side of the road, and thinking himself a judge of architecture, takes upon himself to give his opinion on it. That pillar, he says, is too large, and the other too small; the wings are not proportioned to the centre, and the whole appearance of the structure is dark and heavy.—And then what? He does not say to his auditors, pull it down directly, and build another.—No: he says, perhaps at some future and some distant time, the owner may acquire a more correct taste in architecture, and may be of my opinion.

Gentlemen, I desired that some part of the pamphlet might be read, which was not read by the Counsel for the Crown, that you might perceive with what anxiety the author deprecates all idea of violence. He begins to caution his readers against this evil in the title-page. His

motto

motto is—"Reverence the laws, and let your benevolence be unbounded." It is to be sure very possible for a man to prefix a peaceable motto to a seditious libel; but you will look at the pamphlet throughout, and see whether he does not inculcate peace, and not violence.

"The person of man," says he, "is too holy for violation, that is not the object of a noble enmity; vice is your foe—proceed and conquer."

In another place—"Believe me, Citizens, I love the cause so well, I tremble lest any ill-advised labourer in the vineyard of liberty should fully or disgrace the character of man. As your views are noble, let your conduct approach perfectibility. Much depends on the mode of application. You have justice on your side, and justice must ultimately triumph! Your efforts are yet in their infancy; then let not the morning of your glorious enterprize be stained by petulant anger and unmanly rudeness: be calmly intrepid—obstinately courageous; *but let not the ruffian thought of violence obtrude on your sacred resolutions.*"

Again: "Surely you can never employ means destructive to the end proposed, and attempt to introduce peace by anarchy and war."

Again: "The spoliation of a brother's blood should be considered the very apex of human guilt: once lost, never to be restored."

Again: "But, Citizens, in whatever cause you persevere, let no riot with hellish stain blot your conduct." And yet this defendant, because his wife has without his knowledge sold a single copy of this pamphlet, the author of which thus repeatedly manifests an abhorrence of violence, is charged with publishing this for the purpose of producing violence. If the defendant had had such wicked purposes to execute, he must have been an idiot to attempt their execution by selling a pamphlet levelled expressly against these purposes.

Gentlemen, I trust I have established, that this is not a SEDITIOUS LIBEL. It is not by strained innuendoes—it is not by reasoning, direct or indirect, that men are to be convicted of crimes.—We are not to consider what may be the possible, the probable, or the remote consequences, but the necessary, the direct, and the immediate consequences of what an author writes. It would be dangerous indeed to entertain accusations of libel upon imputations of consequences which may or may not follow. Men are
not

not to be *reasoned* into crimes. Men may differ as to the correctness of the reasoning upon which an accusation is founded. The accusation therefore cannot be sustained, unless that which it charges to be an excitation to sedition is such a direct excitation as that no man living who reads it can doubt about it. Every man is entitled to the most favourable construction of his language; without taking the full benefit of that indulgence, there can be no doubt of the sincerity of this author when he protests against all violence and tumult.

It then remains to be considered, whether, though my definition of sedition be correct and the anti-seditious sentiments sincere, this indictment cannot be supported, inasmuch as there are injurious reflections upon the government and the religion of the country, and upon various bodies of men.

Upon this point I have only a single word to say. Look at the indictment, examine it from the beginning to the end; and you will see there is no charge of this being intended to excite discontent or irreligion, but what is conjoined with the charge of sedition. *What are joined together in an indictment, cannot be separated in a verdict.*--- There is not one count charging a design to excite discontent, another, to excite irreligion, and a third, to excite sedition; but the sedition is throughout joined with the rest. Sedition is the first, the middle, and the last. The defendant is charged with "wickedly, maliciously and *seditiously* contriving to scandalize the King, &c." and thereby to "excite *sedition*, discontent and irreligion;"---"with wickedly, maliciously and *seditiously* publishing a certain libel, containing divers wicked, scandalous, malicious and *seditious* matters."

Thus, you perceive, the indictment imputes to the defendant a mind disposed to excite sedition; it affirms that being resolved to effect that evil purpose, he published this pamphlet as the instrument of accomplishing it, and that this pamphlet, so used as the instrument for accomplishing that wicked design, is a libel operating directly and immediately to its fulfilment.

It follows from the conjunction of all these charges, that they must *all* be substantiated, or they *all* fail, and that even if you are convinced this pamphlet is calculated to excite discontent and irreligion, you cannot pronounce a verdict of guilty, unless you are also convinced it is equally calculated to excite sedition.

D

But,

But, gentlemen, on this charge of irreligion, although it is not that on which I claim your verdict, I cannot abstain from making a single observation—an observation which I hazard with considerable difficulty, because I should be sorry to be misunderstood, either by you, or by any person that hears me.

Whether it is, or is not proper, that writings against Christianity should be prosecuted, is a subject upon which the greatest and the best of men may and do differ in opinion. With a firm belief in the truth of the Christian religion, and with an undoubting confidence that it is not in the power of man to shake it, I own I do entertain considerable doubts of the propriety of prosecuting those who write against it; and I am confirmed in those doubts by the opinions of some of the brightest ornaments to religion, to their country, and to the ages in which they have lived.

If those great and good men to whom I allude, had thought that publications denying the truth of the Christian religion and the authority of the scriptures were not proper to be tolerated in a Christian country, they would not have consumed their time in writing those masterly defences of revelation and confutations of the works of infidels, which we value so highly, as the auxiliaries of our faith; but on the contrary, they would have called on the secular power to restrain the growing impiety of the age by prosecutions. I confess I am not fond of seeing the arm of the law so extended. If Infidels write, is it not a reflection upon the Christian religion to prosecute them? Does it not give them the advantage of boasting that prosecution is the only answer that can be given to them, or that at least which its warmest friends think most conclusive? Let them receive such answers as their predecessors in the same course have received, and the event cannot be doubted. Truth must finally prevail. If it be said that it is not every mind that is capable of judging of the question, I reply that those minds (if there be any) which are not capable of judging, may possibly be led to suspect, that they who prosecute, prosecute only because they feel their cause to be weak. Is it not a natural conclusion for those to adopt who find upon enquiry that they are not allowed to examine the arguments on both sides of that most important question?

It is therefore from a zeal for the honour and advantage of Christianity, that I am led to doubt the propriety of prosecuting those writings which deny its truth; and when I

recol-

recollect, that it is to the works of Herbert, Tindal, Bolingbroke, Hume, and Paine, that we are indebted for the labours of Leland, Campbell, Butler, Lardner, Paley, Watson, and others who might be named, I cannot but consider the cause of Christianity as under infinite obligations to its enemies, because from their attacks it has derived accessions of strength, and I should have lamented therefore if their writings had been suppressed by prosecutions.

But, gentlemen, I repeat that this is not the point upon which I claim your verdict, and I beg you never to forget, that there is no charge of irreligion distinct from the charge of sedition, they are blended in one, and must both be proved, or the indictment fails.

Gentlemen, I come now to the second main ground of my defence, which is, that the learned Counsel for the Crown has not proved that the defendant published this pamphlet, and has fallen very far short indeed of the proof necessary to establish his publishing it with the seditious intent charged.

I will suppose for a moment that the pamphlet is such a libel as it is charged to be; it does not follow necessarily and of course, even if it were published by the defendant, that he is answerable for it criminally. One of the last trials for political libel which came on in this court furnishes me with a memorable instance of the contrary. That instance indeed goes further than I have occasion for—it proves that the intentions of an *author* are not necessarily bad, because the sentiments that drop from his pen are erroneous, his statement of facts false, and his principles completely unconstitutional; for the jury, although they condemned the book in the strongest terms, yet said, that they did not believe Mr. Reeves to have been actuated by the motives charged by the information, and therefore they pronounced him Not Guilty, and in so doing, they did themselves honour, and the justice of their country good service. If the *publisher* had been the defendant instead of the *author*, they would have had less difficulty than they had in coming to that conclusion, because common sense teaches every man that the conduct of a publisher is entitled to more indulgence than that of an author.

With respect to the proof that has been given of publication, unquestionably it is "the ordinary proof" that was given, and was necessary to be given, before the Libel Bill. But I contend with confidence, that the alteration

of the law renders an alteration necessary in the evidence. The sort of publication which then might be proved to entitle the Crown to a verdict, was perfectly different from that which it is necessary now to prove. It was formerly a sort of constructive act, with no intention attached to it. Now it is put on a level with other crimes, in which the intention is to be judged of. The publication was then a fact of a qualified nature. A person would be found guilty of it, although it were committed by his wife or his servants in his absence, and when consequently he had no controul over them; and it was open to him afterwards to explain it by affidavit, proving the innocence of his intentions by his ignorance of the fact. But now more proof is necessary than before, because a verdict of guilty comprehends now what it did not comprehend before the Libel-Bill became a law. The evidence must be commensurate to the verdict—the foundation must be at least as broad as the superstructure. Before the Libel-Bill, the proof of a publication in a defendant's shop without his knowledge might be sufficient, because the question of intention was not before the jury. He was to be tried upon that by the court, subsequent to the verdict; and if he could purge himself of all knowledge of the fact, the verdict availed nothing against him; for the court would pass no sentence. But proof of the naked fact of publication at this defendant's shop, without his knowledge, cannot be sufficient to induce you to pronounce a verdict of guilty, because that does not afford the least evidence of the guilty intention which is charged by the indictment. Unless you are convinced, not only that the defendant published this, but published it with the intention to excite insurrection, you cannot pronounce him guilty. And here you perceive the argument I have addressed to you on the anti-seditious sentiments which pervade the pamphlet, is most conclusive to prove that it is impossible the defendant could have been actuated by such intention.

Gentlemen, It cannot be contended, that in a case of this kind, the guilty intention flows from the act in the same manner as it is presumed to do in crimes of an atrocious nature, unless proof is given to the contrary. For instance, if one man kills another, unless he is able to prove that the circumstances attending the homicide were such as to justify him altogether, or excuse him in any degree, he is found guilty of murder. But in that case,
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the intention is *prima facie* malicious and detestable. It is incumbent upon him therefore to repel the presumption which naturally arises. But this is a case of a different nature, and to which different principles must necessarily be applied. In this case, the presumption is in favour of innocence. In selling a pamphlet, a bookseller acts only in the ordinary prosecution of a lawful business. He does that which *prima facie* he has a right to do, and therefore they who impute to him a crime in so doing, are bound to prove it in all its parts, and more especially they are bound to prove his intention to be criminal, because it is an act in doing which he is liable to mistake, and therefore is entitled to a lenient construction of his conduct. The bounds which the law has prescribed to the liberty of the press are not very accurately known; and a man who values the liberty of the press as he ought to value it, may transgress those bounds without knowing it, and consequently without intending to offend against the law.—Without both knowledge and intention, no man can be guilty of a crime. The evidence which you have heard does not prove that the defendant had any knowledge of the transaction; much less does it support the indictment, which charges him with having an intention to excite sedition, and publishing this pamphlet for the purpose of effectuating that intention.

I shall not be told, that the intention of the party accused is immaterial. I will cite to you what a great and venerable authority in the law says upon that subject.—Lord Hale says—“In all crimes, the *intention* is the principal consideration. It is the mind that makes the taking of another’s goods to be felony or a bare trespass only. It is impossible to prescribe all the circumstances evidencing a felonious intent, or the contrary; but the same must be left to the attentive consideration of the judge and jury: wherein the best rule is, *in dubiis*, rather to incline to acquittal than conviction.”

In this case, however, Lord Hale must mean the judge assisting the jury, not directing the verdict. For he says in another place, “If the judge’s opinion must rule the matter of fact, the trial by jury would be useless. It is the conscience of the jury that must pronounce the prisoner guilty or not guilty.”

Yes, Gentlemen, *your consciences* must pronounce the defendant guilty or not guilty. It is not a matter of legal intricacy

intricacy—it is not a subject which requires professional learning to understand; it is a plain, naked matter of fact, whether you are completely convinced—in the first place, that this pamphlet was *written* for the purpose of exciting civil commotion and insurrection, and in the second place, that the defendant *published* it also for that purpose.

Gentlemen, in coming to a decision upon this case, you cannot forget the subject to which this relates. The learned Counsel for the Crown told you, that it would not be open to me to resort to the usual topic upon these occasions, to contend that the freedom of the press is in danger; because this pamphlet he considered as completely indefensible upon any principle to which the freedom of the press can relate.

In my humble opinion, when prosecutions for political libels are carried on, danger to the freedom of the press is never very remote; and therefore it is not an unseasonable or improper topic to be addressed to a jury. As the bounds prescribed by the law to public discussion are not accurately known, they may be, and sometimes are, transgressed without design; and unless there is clear and decisive proof that the design is that guilty design which is charged by the indictment, you will not presume it. The press may be considered as the centinel who is to inform the public of whatever he thinks material, and apprise them whenever he apprehends there is any danger; and if he is punished with severity because he is rather too alert in giving the alarm, at a future time probably he will not be found at his post, when his alarm may be necessary to the political salvation of his country.

It is to freedom of discussion that we are indebted for all the liberties by which we are distinguished. His lordship most truly and forcibly said upon a late occasion, “To free discussion we are indebted both for the Reformation and Revolution.” Yes, that Reformation which broke asunder those ecclesiastical fetters with which the minds of men in this and some other countries were enslaved, was produced by that partial discussion, and by that imperfect freedom, which the press had then obtained. In proportion as discussion and printing became more free, the religious and the civil rights of mankind became better defined, and more generally understood and acknowledged. Attempts were made to destroy those rights. The
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right of free discussion was that which in the tyrannical reigns of the Stuarts was regarded with the greatest jealousy, and attempted to be controuled with the greatest rigour. This was done in two ways; one, the mean which has been threatened by the Counsel for the Crown to-day, by a previous restraint on the press, in appointing a licenser to prevent the publication of any thing that was obnoxious. The other, by numberless prosecutions of those which escaped his hands. All this produced more discussion, which roused and agitated the public mind, and prepared it for that Revolution to which we always recur when we wander back into the history of our country, in search of that event upon which we are wont to dwell with most delight—because by that event the rights of the people were settled and established on a firmer basis than they had ever before rested upon. Since that time, the progress of knowledge has been extremely rapid. As a necessary consequence, the sum of human misery has decreased—the sum of human happiness augmented. Speculations on the nature of civil society, on forms of government, and on the powers and privileges of governors, have been indulged in this country more than in any other, and it has thrived and prospered from that indulgence. It is the natural effect of free discussion to give a frankness and dignity to the character of the nation which allows it; and it is the energy it produces, that has elevated this country to the proud rank it has so long maintained among the nations of Europe.

Gentlemen, I am entitled in a case of this sort, to hold the Crown to the utmost strictness of proof. When defendants are exposed to the consequence of severe punishments, the proof must come home to them. A man is not to be convicted of a crime, unless every one of the twelve jurymen by whom he is tried is completely and beyond all doubt convinced of his guilt—that guilt including the criminal intention. His Lordship will tell you, that you must be of opinion the defendant did entertain the criminal intent charged by the indictment, before you can pronounce a verdict of Guilty. His Lordship will desire you
 “ to look at the whole of the pamphlet fairly, candidly,
 “ and impartially, because from other parts you may be
 “ called upon to give to the passages inserted in the indictment their qualification and their restricted sense, and
 “ to examine it with every fair leaning to the side of le-
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"nity and compassion." Gentlemen, I am not presuming to exercise my feeble understanding in telling you what will occur to the enlightened mind of his Lordship. I am using his Lordship's own words on the trial of Mr. Reeves, and they do him the highest honour.

Therefore, Gentlemen, unless you are completely convinced, in the first place, that the pamphlet is of the description charged by the indictment, containing a direct incitement to tumult, popular commotion, and insurrection; and in the second place, that the defendant did publish it, and publish it with intent to excite that tumult and insurrection—I am entitled to your verdict of Not Guilty. Nay, if any one of you has a *doubt* upon it, I am entitled to the benefit of that doubt by a verdict of Not Guilty.

One word more as to the fact of publication, and the means of defence which my client may be supposed to have.

It is suggested by the learned Counsel for the Crown, that the defendant's name being on the title-page affords sufficient evidence of his knowledge of the transaction. Gentlemen, a man's name being printed on the title-page of a pamphlet, is surely no evidence against him, unless it is proved that he ordered it to be printed—or seeing it after it was printed, acquiesced in its being there. The defendant's name was printed on this pamphlet without his consent, or even his knowledge; and so the fact stands upon the evidence before you, for there is not a tittle of evidence to prove he ever had any knowledge of it. This pamphlet was sold in his shop, it is true; but it is equally true that it was in his absence, and that he was totally ignorant of the transaction. I cannot however carry the proof of his ignorance of the transaction further than it is carried by the evidence for the Crown. The defendant is not like those great booksellers in this metropolis who keep a number of clerks and assistants, who could prove to you that his business was not conducted by himself, that he was absent when this was published, and that he had no knowledge of the fact or participation in it. This poor man has no servants; the business was conducted by his wife, while he was under the necessity of following an employment out of doors to add to the small profits of his shop. It is then on the deficiency of the evidence for the Crown, that I rely respecting this part of the case.

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No proof of knowledge has been given, and every presumption is in favour of the innocence of the defendant. Gentlemen, your verdict is of infinite importance to the poor man whom I am defending. A verdict of Guilty includes his utter ruin. Sure I am, that you will not pronounce a verdict, the consequence of which is so dreadful, unless you and every one of you are fully satisfied beyond all doubt, that the defendant is guilty of the whole of the crime which is laid to his charge, with all its heavy aggravations. Consult your own judgments, and your own hearts, and pronounce a verdict which will bear the severe scrutiny of your consciences in every future moment of your lives, and the still severer scrutiny of that great Being to whom your consciences are accountable.

Mr. LAW rose to reply.

LORD KENYON. Mr. Law, it has not been usual to reply, except in the case of the Attorney General.

Mr. GIBBS. On the western circuit, it was allowed always to Mr. Morris.

Mr. MINGAY. It has been allowed frequently.

LORD KENYON. Go on, Mr. Law.

Mr. GURNEY. In the King v. the Earl of Abingdon, your Lordship expressly determined that it was a privilege confined to the Attorney General.

LORD KENYON. If I was mistaken then, the sooner I set myself right the better. I thought that was the practice, but I am told it is not so.

Mr. GURNEY. It was impossible for me to foresee that your Lordship would now be of opinion you were mistaken upon that occasion, and therefore I could be guided in my defence only by the law as laid down by your Lordship then.

Mr. GARROW. The case of the Earl of Abingdon was a private prosecution.

LORD KENYON. Mr. Garrow reminds me that that was a private prosecution.

Mr. GURNEY. It was so; but your Lordship said the reply was a privilege confined to the Attorney General personally.

LORD KENYON. Go on, Mr. Law.

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Mr. LAW, in reply.—Gentlemen of the Jury, Many things have fallen from the learned gentleman who has just sat down, which have excited in my mind no inconsiderable degree of surprize. I did not expect, after the surrender of this publication by a gentleman of very considerable talents, who stood here before charged with the interest of another defendant, to have this same pamphlet brought forward as if it was an harmless thing, and brought forwards only for the sake of quoting it; as if the foolish, frivolous motto with which it is prefixed, "*Reverence the laws, and let your benevolence be unbounded,*" could qualify the poison of that publication which is to destroy all reverence for all laws, for all institutions in this land; which is to sour and disesteem our Governors as tyrants, the persons who are the teachers of our holy religion, as swindlers and ravens of the throne, and the military, who are to defend us from foreign and domestic violence, these are persons denominated as murderers, as sanguinary homicides, who are a disgrace to themselves, and to the community of which they form a part. That I shall be told this, and said not in an obscure, unintelligible language, but in a broad, intelligible, palpable manner, and that this is capable of an innocent meaning, because an idle preachment makes way for the rest; why, gentlemen, speaking as a lawyer, with submission to my lord, it would not be necessary for me to do more than to prove it to be a libel on the clergy, on the ministers of the country, on the whole judicial orders of this kingdom; but, gentlemen, I will be bold to say, that if ever there was *sedition* on the face of an impudent libel, it is proved here. What, when it tells us, the members of this free land, that our governors are tyrants, is it to be endured? That all our governors, of every description, for that is the allegation; not that there is excess of power to one, and abuse of the power entrusted to another, which might or might not be, delicate and guarded management; but that all are tyrants, if that is not *sedition*, name me the proposition that is: is it not *sedition*, is it not mischievous? Nay, it would be enough for me to prove that to have a mischievous tendency, to prove that it is seditious to say that the military are a band of hired ruffians; that is the very object, I apprehend, of *sedition*, to say that the soldiers are degraded beings, and that the lawgivers of this land are insensible to the feelings of humanity. Has not that a direct tendency to raise the arms of these soldiers against the constitution of the country, and to redeem themselves

selves from that vassalage which is imposed upon them? More seditious it is impossible for any thing to be, and therefore calls more heavily down for punishment on the publisher.

But, gentlemen, the learned gentleman began his address to you by stating that there was a hardship imposed on the defendant by the mode of prosecution, that it was tried here instead of a quarter sessions, and that being tried here put the defendant to a much heavier expence. Why, gentlemen, the learned gentleman must have known that his client, the defendant, might have pleaded in *forma pauperis*, therefore it is his own voluntary omission. It is open to discussion whether that religion which is the established religion of the country, upon which all our happiness here, and all our assurance of happiness hereafter depends, upon which the existence of the practice of all our moral duties depends also, as their best sanction; that all this may be denied, and that it may be publicly denied, I am sure it is a very hardy proposition to lay down. With respect to religion in this country, the laws of it have indulged every thing that may be freely the subject of fair discussion. One would have thought the learned gentleman had not known the particular statutes which imposed the heavy penalties, statutes which imposed a *premunire*. As to "the cobweb'd charters of the state," if the things which are the very substance of our constitution, if they are to be treated as things of no regard, this is to surrender religion to the contempt and neglect with which it is treated in a neighbouring land.

Gentlemen, I trust we are not ripe yet to make that surrender; I trust we are not yet ripe to surrender all the orders of the state; I trust we are not ripe yet to surrender all those gallant persons employed in our defence; I trust we are not ripe yet to surrender all the reverend orders of religion; and I trust also that the various officers and ministers of the law will be protected; and there never (I repeat it with no guard on my expression) there never, I repeat what I said, that the liberty of the press can never be so effectually endangered as by the present publication. If breaches on public orders and private characters should arise to so enormous a height, and increase to such an enormous magnitude as to render a check necessary, God forbid it should, but if it should be necessary to impose a temporary restraint on that liberty, with a view to its final advantage, I am sure there is no gentleman but would

part with that liberty, which is so dear to us as Englishmen, for a short period, if it might tend to correct the abuses which daily teem from it, and to put a stop to those publications which make the good, the virtuous, and the decent of this country, nauseate the channels of that press, which is otherwise so invaluable a privilege: but it will not be necessary that there should be restraints on publications, so long as punishment is properly applied to abuses.

Gentlemen, in the instance in question these observations are submitted to you. Read this pamphlet; read, if you will, with every disposition to find a venial and excusable sense on those words: but if there be nothing but mischief—if you cannot, without distorting the use of language, and the plain sense of words—if this is a pamphlet which strikes at the root of all governors—if it strikes at the root of all subordination in society, and going hand in hand to bring on the mischiefs of a neighbouring country—if this is the case, you must find it so by your verdict.

But, Gentlemen, if you can find any innocent meaning in the pamphlet, give him the benefit of that innocent meaning; but you must first have violated all sense and meaning before you can affix to it even a venial and excusable meaning. As to what the Counsel for the Defendant has said, that the Defendant is not answerable for what he disposes of—he is bound to know what is done at his own house; he is not to throw about his arrows and fire-brands, and say, are we not in sport?—he must be sure these publications are innocent. But if this may be said of every publisher, it must be said and executed with tenfold justice on a man whose name is affixed on the publication as the avowed publisher of it. It is said to be written expressly for the benefit of the Members of the London Corresponding Society, which is a name of not very innocent estimation, and would necessarily lead a person to look into the pages; and the first, second, and third teemed with mischief: if he bestowed one careless minute on it, it must be committed to the flames. Whatever reaches it must be contaminated; for it is the most unvarnished libel I have seen: and I will not doubt, or for one moment believe so ill of the institutions of any country, as to believe that a jury of honourable persons would hesitate in affixing a direct mark of reprobation on this publication. It is essential that this publication should receive

receive that reprobation, and that this publisher should receive that punishment which belongs to so infamous a character.

Gentlemen, I will trouble you no further: I will sit down, not doubting but that, from the most absolute conviction, and from the most sincere and ardent zeal for all our preservation, that this man will be delivered over by you to encounter that punishment which the law affixes on those who are guilty of crimes of this nature.

LORD KENYON.

GENTLEMEN,

This is an indictment sent here by the grand jury of the county, for your consideration. The learned Counsel, in the beginning of his address, complained of some severity, I do not know what, having been applied to the defendant. In general, it is enough to state to you that the defendant has incurred some expence, and that it ought to have applied to every case that went before, and must apply to every case that follows after. If the defendant, in point of circumstances, was not able to bear the expence, it has been suggested to you that he might have applied, and certainly would have been listened to by the Court, to have pleaded in *forma pauperis*.

Gentlemen, the first thing for your consideration is, whether the defendant published this libel: it is said to be published at his shop, it has his name, and is bought at his shop; if that was not to fix it on the party, I am not aware what mode of proof would be conclusive.

Gentlemen, something has been said respecting the Libel Bill, as if the jury were now clothed with power that did not belong to them before. It always was my practice before that to tell juries, that it was the duty of a jury to enter into the intention, to see if there was a man who could say he published it innocently. The nature of this publication I do not enter into: the learned gentleman says, that no man could subject himself to the pain of reading it half through, it is so disagreeable.

Gentlemen, it has been a painful office to me to hear these extracts read by the officer: it is not the dulness of it, but the impiety and wickedness of it, that offends me, and raises a perfect horror in my mind. The Counsel for the Prosecution has been asked the meaning of sedition; and

and we are told from various languages that it means tumult, that it means I do not know what: the Latin, the French, the Italian, are travelled into for the explanation. I should think that to be seditious, which raises in men's minds those ferments which may lead to acts which may endanger the safety of the state, and loosen the bands of social life. Our Constitution consists of Church and State; and when those imperfections which always must belong to laws and systems which are instituted by fallible men, are yet treated with respect, it conduces to the happiness of all, and which it is better to observe, than see what the constitutional parts of government are—the governors civil and military. This pamphlet begins with calumniating in the grossest terms all the governors, and states them to be Tyrants, having not in view the good of those that live under their controul, and treating them as their slaves, and as being created merely for the purpose of serving them. The Military are stated to be kept for the most detestable purposes—to give efficiency to the flimsy claims of Government, and enforce compliance to its arbitrary commands. With respect to the Christian Religion, the learned Counsel for the Defendant did himself the highest honour by the manner in which he expressed himself, by the feelings which he manifested. My opinion is, from the deepest conviction, that this publication is for the most part full of all hurtful purposes—namely, to sow discontent among the people. He tells us, that the Clergy “impose duties on mankind that they never follow;”—that “they preach poverty, abstinence, and virtue, to their auditors; but they themselves riot in luxury, roll in riches, and are flagrantly vicious!” All of you, I suppose, have an acquaintance among that part of society. There may be wicked men among the clergy—undoubtedly there are; but is this picture of the clergy a fair picture in general, which any body ought to have drawn of a respectable body of men? Now in all the observations which have been made on our government in Church and State, if it gives society a disgust of that government, if that is not a seditious pamphlet, I should be glad to know—I should be glad to have some proposition given me to guide my conduct in the future part of life.

It has been said, there are some parts of the pamphlet, which the learned gentleman has cited, which recommend
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order and benevolence. It is of little purpose to set a city on fire, and afterwards to endeavour to throw a pail of water. If there are sown in the minds of men, a disgust of all the parts of government under which we dwell, it will be of little purpose afterwards to call them back, and say, we do not put those amongst them who are worthy of regard.

Gentlemen, the case is before you, and you are to do what you think proper. I am bound and called upon by the Act of Parliament to explain to you what sedition is: and with respect to the pamphlet in question, I am called on by the laws of God and man to declare to you that I can assure you this, that it seems to me to be the most audacious libel I ever read.

On Saturday, Jan. 28, 1797, the Defendant was brought into the Court of King's Bench, Westminster, to receive judgment, when the following Affidavits were read in mitigation of sentence.

IN THE KING'S BENCH.

The King v. John Smith.

John Smith, of Portsmouth-street, Lincoln's Inn Fields, in the county of Middlesex, bookseller, the above-named defendant; — Thornton, of Bennet-street, St. James's, in the said county, doctor of physic; and — Allen Williams, of the borough of Southwark, in the county of Surry, Surgeon, severally make oath: and first the said John Smith for himself saith, that he hath been imprisoned in the gaol of Newgate for the space of twelve months and upwards, on a charge of high treason, of which he solemnly swears he was innocent, and of which on the 19th day of May last he was acquitted; that previous to his said confinement he enjoyed a very good state of health; but that during such confinement he, this defendant, contracted a disorder under which he has laboured ever since, and which he is advised by the said deponents, Robert John Thornton and Allen Williams, who have attended or prescribed for him on account thereof, is of such a nature that close confinement and the common gaol allowance must inevitably prove fatal to his life. And this deponent further saith, that all the property he has in the world, besides his own and family's wearing apparel, consists only of a few books and a small quantity of very indifferent household furniture,
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of inconsiderable value; and that he has a wife and four young children, the eldest of whom is not eleven years of age; depending entirely on his labour and industry for their subsistence.

And the said Robert John Thornton for himself saith, that he hath in his medical capacity prescribed for the said John Smith for about a fortnight last past; and he is of opinion that the state of his lungs is such, that close confinement with the common gaol allowance, which he, this deponent, is informed and believes, consists of bread and water, and occasionally broth and a little meat, would, in the present condition of the lungs of the said John Smith, so far increase his disorder as eventually to terminate in his death.

And the said Allen Williams saith, that in the month of December last, and in the beginning of the present month, he, this deponent, attended the said John Smith at the house of Mr. Cox, a stationer in the Borough, by whom the said John Smith, as this deponent understood, was then employed; that the said John Smith laboured under a very serious illness, occasioned by a considerable affection of the lungs, attended by a fever, loss of strength and appetite, restlessness, difficulty of breathing, and many other disagreeable symptoms; the ill effects of which disease he at present, in a very material degree, labours under: and therefore he, this deponent, saith he is of opinion, that close confinement and the ordinary gaol allowance above mentioned, would exasperate the disease of the said John Smith, and in a short time take away his life.

Sworn in open court, by the said

John Smith,	Robert John	} JOHN SMITH ROB. JOHN THORNTON ALLEN WILLIAMS
Thornton, and Allen Wil-	liams,	
this 28th day of Jan.		
1797.	By the Court.	

When Mr. Gurney, Counsel for the Defendant, said he had nothing to say—he rested entirely on the affidavits.

Mr. Attorney General rose and said, My Lord, you have heard the affidavits read, which certainly should be taken into consideration; but the publisher of libels of this nature ought to be punished for the benefit of society.

The Defendant addressed the Court to the following effect—My Lord, may I crave your Lordship's attention—
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for a few moments?—After hearing the sentence of Joseph Burks, and having been convicted of a similar offence, I cannot help anticipating my being sent to the same prison. I can assure your Lordship, from the best information I have been able to collect, the place is truly distressing:—he is locked up in a cold, damp cell, without fire, fifteen hours out of twenty-four. [Lord Kenyon interrupted, and said, We do not want to hear long speeches: if there is any misconduct in the prison, the magistrates will correct it: you are not going there—at least you have no reason to anticipate it.] I do not wish to offend your Lordship or this Court, but I have one more observation to make, that you are not only going to punish me as an individual, but a wife and four innocent children, who have no means of support but from my industry. [Lord Kenyon observed, persons convicted of crimes of this nature must expect their relations to be punished in some degree. But this was a common appeal.] My Lord, situated as I am, let the sentence be what it may, I must submit.

Lord Kenyon said, Yes, certainly.

SATURDAY, FEB. 11.

The KING v. JOHN SMITH.

Mr. LAW moved the Judgment of the Court upon John Smith, who had been convicted of a Libel.

Mr. Justice ASHHURST addressed the Defendant to the following effect:

John Smith, you have been convicted of publishing one of the most villainous and atrocious libels that ever appeared in a Court of Justice. That libel is contained in a pamphlet, entitled, *The Duties of Citizenship*, and which has been so lately before the Court, in the case of one of your brethren, Joseph Burks, that it is quite unnecessary for me to repeat any part of it, for every man who heard it must remember, and remember with horror, the nature of its contents;—the tendency of which is to undermine and destroy all law, all government, and all religion. From the further publication of such materials, the world can never derive either amusement or edification; it is therefore much better to bury it in oblivion:—indeed the

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only edification which others can derive, either from you or your conviction, is, that of learning from your punishment and example, that it is far better for them to endeavour to earn a livelihood by honest industry, than by endeavouring to debauch the minds and contaminate the morals of his Majesty's Subjects.

But you have made an affidavit, in which a physician and a surgeon join with you, stating that the state of your health is such, that a long imprisonment must necessarily occasion your death. When you published the wicked pamphlet, which is the subject of the present prosecution, you paid but little attention to the cause of humanity; for had it succeeded to the extent of your wishes, it might have endangered the lives of others, whose safety and welfare are far more important to society than yours; therefore an appeal to the humanity of the Court comes with an ill grace from your mouth: but this Court will never lose sight of humanity, even to the most undeserving. You alledged, that the condition of a certain prison was such as would occasion your death, if you should be confined in it. We therefore caused to be made diligent enquiry as to the state of the prison at Clerkenwell; and we are informed by Mr. Mainwaring and Dr. Glass, that although it has been represented to us as an unwholesome prison, where people are daily dying, yet the fact is not so; that although Joseph Burks was sent there in a bad state of health, yet by the discipline of the prison he is restored to health; and that although one hundred and forty-nine prisoners have been confined there for several months, there has not been one death, except that of one person who was brought there in a dying state. This intelligence has relieved the Court from an anxiety, which was the effect of its feeling and humanity. But our duty to the King and to the Country demand from us to take care not to suffer to be let loose upon the public such monsters of iniquity as you are. The Court, having considered the whole of your case, doth therefore adjudge and order that, for this your offence, you be imprisoned and kept to hard labour in the House of Correction, in Clerkenwell, for two years, and that, at the end of your imprisonment, you do enter into your own recognizance in the sum of 1000*l.* for your good behaviour for five years; and I wish you to keep it in mind, if you are guilty of any offence in that time, so as to forfeit that recognizance, you must

must take it upon yourself, and not upon the Court that imprisons you.

Lord KENYON—After the misrepresentation which has taken place, and from what we now know of the prison at Clerkenwell, we were called upon, and we think we could not do better, than to send this person there. This prison, I verily believe, is admirably regulated. I wish that every other prison was in the same condition. I wish that every keeper of a prison would recollect and feel, that he owes a duty to the public, that is, to see that the prison under his care is duly regulated. Instead of this, I am sorry to hear that, in many prisons, there are some of the most shocking scenes of riot and confusion: that in some of them are committed offences of the greatest enormity. I wish the keepers of such prisons to remember, that their inattention in such cases is highly criminal in them—that such inattention in the keeper of a prison is, by law, an indictable offence—that there must be a reformation, a speedy reformation, in these things, or else severe punishment must follow.

The prisoner said—"I will not detain the Court for half a minute. This sentence is equal to a sentence of death upon me."

FINIS.

By the following extracts the public will be able to form some judgment respecting that information which the Court are stated to have received, as also of that authority, who "verily believes" this new Bastille so "admirably regulated." They are contained in a letter addressed from the prisoner to his wife, and conveyed to her a few days since.

Feb. 25, 1797.

SITTING on my bed I write this on my knee. I am yet very poorly with a swimming in my head: I take the earliest opportunity of acquainting you with my real situation.

The day I came here I had nothing but bread and water until the next morning, when I had a loaf, which *should weigh a pound*. Owing to my being ill, the governor ordered me into the kitchen, until the doctor came to visit me; at present I remain there. I have a fire to sit by when I please: this is the greatest indulgence that can be granted. I have whilst in the kitchen water gruel for my breakfast; and some broth for dinner, every Sunday, Tuesday and Friday; the other four days I have broth and *meat*, which I shall describe hereafter. I am locked up at five o'clock in the evening until seven the next morning, in a cold, damp cell: to keep the wind and rain out I am obliged to be in total darkness; this is the greatest hardship I experience at present, except the provisions, which if I did not have something more than what is allowed by the prison, I must inevitably perish. I live entirely on their broth and water gruel, with about four ounces of meat four days out of seven. Indeed the meat is so hard and gristly, that nothing but real want obliges me to eat it.

This, my dear, is my present situation. I hope you and my dear children will never experience what I suffer. It is impossible for me to describe what I feel, at being deprived entirely of your company and the sight of my children. But why should I murmur? I hope the day will come when they will be benefited by the sufferings of their father.

The gaol allowance is a loaf of bread and water every Sunday, Tuesday and Friday; this is all that is allowed for those three days. Monday, Wednesday, Thursday and Saturday we have a loaf in the morning, and about four ounces of shin of beef and a pint and a half of broth (that is, the liquor it is boiled in). This is just sufficient to keep us alive.

The cell that I sleep in is about eight feet long and six feet wide. I have neither chair, stool, or any thing to sit on; the wall and floor are very damp; there is no fire or fire-place in it. I have little or no sleep in the night, owing to the cold. If I live the two years it will be a miracle. The stops I have to eat have no strength in them. To be confined in a solitary cell fourteen hours is cruel in the extreme.—Burks looks very bad; in fact he says he is almost starved. I am locked up at night in the same yard.

Give my respects to all friends, and come and see me as often as you can. I am so cold I can hardly write.

J. SMITH.

From this statement it appears that, on account of indisposition, Smith was suffered to remain in the kitchen, and could enjoy the warmth of a fire during the day. But he is thus indulged no longer! On Monday, February 27, he had occasion to remonstrate with the visiting magistrates upon his want of provisions; their answer was that "sentences were calculated to punish, not to reward;" and that it was "the existence alone of the prisoners they de-
"sired." On which he was ordered from the situation he describes, and sent to hard labour. Comment is here unnecessary; but the public should not remain ignorant of another point, namely, the cruel treatment of his wife, when she is permitted to see him. On these unhappy occasions Mrs. Smith is suffered to advance to a wooden bar, at some distance from which is a row of iron pallsades, and to the limits of this latter her husband is only suffered to approach, while one of the servants remains within this confined space and another without, the first listening to the discourse of the one, and the second to that of the other. Every thing is as narrowly inspected as if they believed the existence of the place depended alone on its secrecy; nor can the pleading wife aught avail with her tears or entreaties; she is abruptly and positively refused the smallest conveyance of that subsistence for want of which she sees her husband dying. Under the old despotism of France, and in the old Bastille, prisoners for petty misdemeanors were better treated, and better provided with food; but we are forced to recollect we are not now treating of France, but of the administration of a William Pitt.

4ND
8-27-37